

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on July 24, 2009. No fees are due herewith this Amendment. However, the Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to the Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00597 on the account statement.

Claims 1-21 are pending in the application. Claims 9-16 and 18-21 were previously canceled. In the Office Action, Claims 2-8 and 17 are objected to. Claim 3 is rejected under 35 U.S.C. §112, second paragraph. Claims 1-8 and 17 are rejected under 35 U.S.C. §102(b) or, alternatively, under 35 U.S.C. §103(a). In response, Applicants have amended Claims 1-2, 4-8 and 17 and canceled Claim 3 without prejudice or disclaimer. The amendments do not add new matter and are supported in the specification, for example, at page 5, lines 12-24. In view of the amendment and for at least the reasons provided below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 2-8 and 17 are objected to for the recitation of the phrase "a composition" instead of "the composition." Claim 7 is objected to for missing an article before the term "ingredient" and a period at the end of the sentence. See, Office Action, page 3, lines 2-8. In response, Claims 2-8 and 17 have been amended to recite "the composition of Claim 1" and Claim 7 has been amended to recite "the ingredient" and to include a period at the end of the sentence. Applicants respectfully submit that the amendments are solely for clarification purposes and are not made to overcome any prior art. For at least the reasons set forth above, Applicants respectfully request that the objections to Claims 2-8 and 17 be reconsidered and withdrawn.

In the Office Action, Claim 3 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office states that the phrase "a compound that upregulates their biosynthesis in vivo" is unclear because of the word "their." The Patent Office also asserts that it is unclear as to what Applicant means by "glutathione or natural sources thereof." The Patent Office also asserts that it is unclear what Applicant means by "soy extracts and other sources of flavanoids with antioxidant activity and ursodeoxycholic

acid” because it is unclear if ursodeoxycholic acid is similar to soy extracts. See, Office Action, page 3, line 14-page 4, line 9. In response, Applicants have canceled Claim 3 and have added some of the previous subject matter of Claim 3 into Claim 1. However, Applicants have amended Claim 1 to recite, in part, wherein the antioxidant is selected from the group consisting of cystine, S-adenosyl-methionine, a compound that upregulates the biosynthesis of cystine or S-adenosyl-methionine in vivo, tea catechins, coffee extracts containing polyphenols and diterpenes, grape or grape seed extracts rich in proanthocyanidins, spice extracts, soy extracts and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsenosides and natural sources thereof, and combinations thereof. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 5, lines 12-24. For at least the above mentioned reasons, Applicants respectfully submit that the present amendments render moot the previous rejection of Claim 3 under 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 3 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 1-8 and 17 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Publ. No. 2001/0043983 to Hamilton. (“*Hamilton*”) or, in the alternative, under 35 U.S.C. §103(a) as being rendered obvious by *Hamilton*. In contrast, Applicants respectfully submit that *Hamilton* is deficient with respect to the present claims.

Currently amended independent Claim 1 recites a pet food composition comprising an antioxidant, wherein the antioxidant is selected from the group consisting of cystine, S-adenosyl-methionine, a compound that upregulates the biosynthesis of cystine or S-adenosyl-methionine in vivo, tea catechins, coffee extracts containing polyphenols and diterpenes, grape or grape seed extracts rich in proanthocyanidins, spice extracts, soy extracts and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsenosides and natural sources thereof, and combinations thereof. The amendment to Claim 1 is supported in Applicants’ specification, for example, at page 5, lines 12-24. In contrast, Applicants submit that *Hamilton* fails to disclose or suggest each and every element of the present claims.

Hamilton fails to disclose or suggest a pet food composition comprising an antioxidant, wherein the antioxidant is selected from the group consisting of cystine, S-adenosyl-methionine,

a compound that upregulates the biosynthesis of cystine or S-adenosyl-methionine in vivo, tea catechins, coffee extracts containing polyphenols and diterpenes, grape or grape seed extracts rich in proanthocyanidins, spice extracts, soy extracts and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsenosides and natural sources thereof, and combinations thereof as required, in part, by currently amended independent Claim 1.

Hamilton is deficient because it fails to teach or even suggest the presently claimed antioxidants in combination with a molecule that stimulates energy metabolism of a cell. Further, *Hamilton* fails to even recognize the benefits of the specific combinations of the currently amended claims. For example, *Hamilton* fails to recognize that the combination of a molecule that stimulates energy metabolism of a cell in combination with specific antioxidants may be used to improve the coat quality in pets. See, e.g., Examples 1-6 in the specification at pages 8-18.

Instead, *Hamilton* teaches administering compositions to aged pets and other animals. See, *Hamilton*, Abstract. The compositions of *Hamilton* include R- α -lipoic acid, L-carnitine and coenzyme Q10. See, *Hamilton*, Abstract. Indeed, at no place in the disclosure does *Hamilton* mention the presently claimed antioxidants. Therefore, it is readily apparent that *Hamilton* fails to disclose or suggest a pet food composition comprising an antioxidant, wherein the antioxidant is selected from the group consisting of cystine, S-adenosyl-methionine, a compound that upregulates the biosynthesis of cystine or S-adenosyl-methionine in vivo, tea catechins, coffee extracts containing polyphenols and diterpenes, grape or grape seed extracts rich in proanthocyanidins, spice extracts, soy extracts and other sources of flavonoids with antioxidant activity, ursodeoxycholic acid, ursolic acid, ginseng, ginsenosides and natural sources thereof, and combinations thereof as required, in part, by currently amended independent Claim 1.

Moreover, anticipation is a factual determination that "requires the presence in a single prior art disclosure of each and every element of a claimed invention." *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must

clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Hamilton* fails to disclose each and every element of the present claims, *Hamilton* fails to anticipate the present claims. Further, because *Hamilton* fails to disclose each and every element of the present claims, *Hamilton* fails to render obvious the present claims.

Accordingly, Applicants request that the anticipation or, in the alternative, the obviousness rejection of Claims 1-8 and 17 be reconsidered and withdrawn.

In the Office Action, the Claims are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-5 and 12 of co-pending U.S. Serial No. 10/527,097 and Claims 18 and 19 of co-pending U.S. Serial No. 10/597,436. The Patent Office asserts that, although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in all three applications are drawn to an orally administered composition comprising a molecule that stimulates energy metabolism of a cell and/or an antioxidant to improve hair or coat quality of an animal in an orally acceptable carrier. See, Office Action, page 8, lines 14-21.

In response, Applicants submit that, at this stage in prosecution, it would be premature to file a terminal disclaimer because the instant claims have not yet been allowed, and thus, the final version of these claims is not yet known. Further, Applicants also submit that the claims of co-pending U.S. Serial Nos. 10/527,097 and 10/597,436 may also be amended to include subject matter not contained in the claims of the present application. At such time when the claims of any of the pending applications become allowed, Applicants will reassess the double patenting rejection in view of the allowed claims.

Accordingly, Applicants respectfully request that the provisional rejection of the present claims on the ground of non-statutory obviousness-type double patenting be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
Phone No. 312-807-4204

Dated: October 21, 2009